

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-501
SENATE BILL 1038**

AN ACT TO AUTHORIZE LANDOWNERS TO INITIATE A SPECIAL PROCEEDING TO CLARIFY THE EXISTENCE OF A RIGHT-OF-WAY OPEN TO THE PUBLIC ADJACENT TO THEIR PROPERTY WHEN THE PUBLIC RECORDS ARE UNCLEAR CONCERNING THE ACTUAL EXISTENCE OF THE RIGHT-OF-WAY AND TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO CONDEMN LAND FOR SECONDARY ROAD PAVING OR MAINTENANCE PROJECTS WHEN SEVENTY-FIVE PERCENT OF THE ADJACENT LANDOWNERS AGREE TO PROVIDE NECESSARY RIGHT-OF-WAY FOR THE PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-96.1. Special proceeding to declare a right-of-way dedicated to public use.

(a) A special proceeding under Article 3, Chapter 1 of the General Statutes may be brought to declare a right-of-way dedicated to public use if:

- (1) The landowners of tracts constituting two-thirds of the road frontage of the land abutting the right-of-way in question join in the action;
- (2) The right-of-way is depicted on an unrecorded map, plat, or survey;
- (3) The right-of-way has been actually open and used by the public; and
- (4) Recorded deeds for at least three separate parcels abutting the right-of-way recite the existence of the right-of-way as a named street or road.

(b) In a special proceeding brought pursuant to this section, the clerk of court shall issue an order declaring the right-of-way to be dedicated to public use upon finding that the provisions of subsection (a) of this section have been proven.

(c) Any right-of-way found to be dedicated to public use pursuant to this section that is proposed for addition to the State highway system shall meet the requirements of G.S. 136-102.6.

(d) This section shall not apply to any right-of-way established by adverse possession or by cartway proceeding."

SECTION 2. G.S. 136-44.7 is amended by adding a new subsection to read:

"(c) When it is necessary for the Department of Transportation to acquire a right-of-way in accordance with (a) and (b) of this section in order to pave a secondary road or undertake a maintenance project, the Department shall negotiate the acquisition of the right-of-way for a period of up to six months. At the end of that period, if one or more property owners have not dedicated the necessary right-of-way and at least seventy-five percent (75%) of the property owners adjacent to the project and the owners of seventy-five percent (75%) of the road frontage adjacent to the project have dedicated the necessary property for the right-of-way and have provided funds required by Department rule to the Department to cover the costs of condemning the remaining property, the Department shall initiate condemnation proceedings pursuant to Article 9 of this Chapter to acquire the remaining property necessary for the project."

SECTION 3. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 5th day of
December, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:25 p.m. this 19th day of December, 2001